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5 **NOT FOR PUBLICATION**
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 American Honda Motor Co., Inc.,) No. CV-08-0656-PHX-FJM
10 Plaintiff,) **ORDER**
11 vs.)
12)
13 AZGrafix; AZ Online Auction Pros, LLC;)
14 Susana Alvarez; Eric J. Schad; Ted Smith,)
15 Defendants.)
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18 The court has before it defendant Eric Schad's motion to dismiss (doc. 21), and
19 plaintiff's response (doc. 28). Schad did not file a reply and the time for doing so has
20 expired.

21 Schad moves to dismiss the complaint against him on the grounds that (1) he was not
22 served with a summons as required by Rule 4, Fed. R. Civ. P., (2) the amended complaint
23 fails to state a claim upon which relief can be granted, and (3) plaintiff's status report (doc.
24 15) contains an inaccurate statement.

25 Schad acknowledges that a copy of the amended complaint and status report were
26 served on him, but he denies that a copy of the summons was served. On November 14,
27 2008, plaintiff filed a sworn affidavit of service signed by the process server attesting that
28 on October 28, 2008, Schad was served with the summons, amended complaint, and status

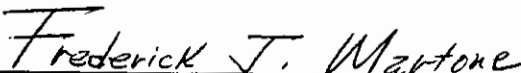
1 report (doc. 20). "A signed return of service constitutes prima facie evidence of valid service
2 which can be overcome only by strong and convincing evidence." S.E.C. v. Internet
3 Solutions for Business, Inc., 509 F.3d 1161, 1166 (9th Cir. 2007) (quotation omitted). Schad
4 cannot overcome this presumption of service by merely denying that he was served. His
5 motion to dismiss on this basis is denied.

6 Schad's bare assertion that the amended complaint fails to state a claim upon which
7 relief can be granted is also an insufficient basis upon which to dismiss the complaint. The
8 factual allegations in the complaint, taken as true for purposes of this motion, sufficiently
9 state a claim under Rules 8(a) and 12(b)(6).

10 Finally, Schad contends that plaintiff's status report contains an inaccurate description
11 of the evidence. Even if we assume the status report contains an inaccurate statement, this
12 does not constitute an adequate basis upon which to dismiss the complaint.

13 Based on the foregoing, **IT IS ORDERED DENYING** Schad's motion to dismiss
14 (doc. 21).

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16 DATED this 19th day of December, 2008.

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19 Frederick J. Martone
20 United States District Judge
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